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Report of the Special Rapporteur on the human rights of migrants, François Crépeau

Addendum

Mission to Sri Lanka : comments by the State on the human rights of migrants*

* Reproduced as received.

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Mission to the Gambia: comments of the Government of Sri Lanka on the report of the Special Rapporteur on the human rights of migrants

The following document represents the views and comments of the Government of of Sri Lanka in respect of the Report of the Special Rapporteur on the human rights of migrants, drafted following a country visit to of Sri Lanka from 19 to 26 May 2014.

Para 07

With a view to mitigate the issues of migrant workers abroad, the Sri Lanka Bureau of Foreign Employment (SLBFE) has introduced a training system for migrant workers, i.e Level 3 qualification of 'National Vocational Qualification' (NVQ). The introduction of this training system has reduced the number of complaints of migrant workers from 52% to 33%.

Any migrant worker, who has Level 3 NVQ, is considered as a "house- keeping assistant". House-keeping assistants are eligible to claim better benefits, such as insurance etc., during their employment in the receiving country.

Para 09

Percentage of Sri Lankan migrant men should read as 59.7% (2013 statistics)

Para 10

A considerable number of persons of Tamil ethnicity have migrated to Western countries and not to Middle Eastern countries. Therefore, migration to non-Middle Eastern countries does not come under the purview of the subject matter.

The lack of economic opportunities and livelihood continue to be determining factors which compel people to go abroad in search of better economic benefits. This is common to all communities in Sri Lanka and is not confined to any specific ethnic group.

In Sri Lanka, domestic workers choose overseas employment for two main reasons i.e. (a) to be able to build a house (b) to be able to avail of better education facilities for their children. Both are long-term objectives. Usually, when migrant workers are unable to achieve these objectives, they tend seek repeated employment abroad. Such repeated employment abroad by a father or mother of a family leads to complex social issues that have a detrimental effect on the family. Having taken into consideration this phenomenon, the SLBFE is working with the Ministry of Economic Development to help the families of migrant workers build houses. Under this programme, low-interest-rate loans are provided to the migrant workers before they leave Sri Lanka for foreign employment. They are encouraged to complete building their houses within the first six months of their work abroad. This scheme helps migrant workers achieve their dream of building a house by the time they complete their tenure of employment abroad. It also helps migrant workers to refrain from seeking repeated foreign employment enabling them to focus on their families' welfare upon their return and seek employment locally thereafter.

SLBFE is also providing scholarships for the children of migrant workers to facilitate educational needs. During 2013, the Bureau has mobilized 2500 scholarships. This number is expected to increase up to 3000 by 2015. SLBFE also conducts some talent events and reality shows among migrant workers and their family members as a means of recognizing

their work, and their contribution to the economy. This is also aimed at providing opportunities to them to discover and showcase their talents and skills.

Para 12

Sri Lanka signed the International Convention for the Rights of Persons with Disabilities (CRPD) in March 2007. Following the election of the new President, Mr. Maithripala Sirisena on 8th January 2015 and the formation of the new Government, a consultation process was initiated in May 2015, to take steps towards early ratification of the Convention.

Para 14

The ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children was completed on 15 May 2015. The Instrument of Ratification has lodged with the UN Secretary General in the first week of June 2015.

Para 26

The Department of Immigration and Emigration which was previously under the purview of the Ministry of Defence was placed under the purview of the Ministry of Policy Planning and Economic Affairs, under the new Government formed following the January 8th 2015 Presidential elections.

The travel document is issued by the Department of Immigration and Emigration of Sri Lanka based on the National Identity Card (NIC) and the Birth Certificate. These two documents are generated by two different government institutions i.e Department of Registration of Persons and Registrar General's Department. Therefore, eventually, issuing of a travel document involves three different government institutions; the Department of Immigration and Emigration, the Department of Registration of Persons and the Department of Registrar General.

The issuing of a NIC is also not handled by a single institution. For example, the *Grama Niladari* (Village Officer), Divisional Secretariat and the Department of Registration of Persons are involved in issuing a NIC.

Under these processes, changing the date on a birth certificate or issuing a forged birth certificate or a travel document is not an easy task.

While, the issuance of forged travel documents or issuance of genuine travel documents based on false documents (unknowingly) or issuing visa based on using forged documents is a global issue and is not only confined to Sri Lanka, all possible steps are being taken continuously by remaining alert to ensure that such incidents do not occur.

Para 28

In terms of Section 15 of the Human Rights Commission (HRC) of Sri Lanka Act No.21 of 1996, any authority or person to whom a recommendation has been made is required to report to the HRC of the action or proposed action taken to give effect to the recommendations of the HRC. If any authority or person fails to report to the Commission of the action or proposed action to give effect to the recommendation or it is the view of the HRC that the action taken is inadequate, the HRC is required to submit a full report of the facts to His Excellency the President who shall cause such report to be placed before Parliament. Further to the above statutory requirement, the Ministry of Public Administration issued Circular 17/2005 to all public institutions directing them that they

should take necessary action to implement the recommendations of the HRC. In the event they are unable for good reason to implement any recommendations they are obliged to inform the Human Rights Commission of such reason/s.

The change of Government following the Presidential election held in Sri Lanka on 8 January 2015, has ushered in an atmosphere necessary for greater focus on *inter alia* independence of institutions including the Human Rights Commission. In this regard, the Sri Lanka Parliament adopted the 19th Amendment to the Constitution on 28th April 2015, which will set up an independent Human Rights Commission among other independent commissions.

The Government hopes that setting up of an Independent Human Rights Commission, following the constitutional amendment, would enable the Human Rights Commission to obtain 'A' status accreditation in compliance with the Paris Principles relating to the status of national institutions.

Para 35

The SLBFE has established a special Investigation Division to address the issues of exploitation of migrant workers at the recruitment process. This Division is empowered to take legal action against wrong doers. Annually, SLBFE entertains more than 3000 cases in connection with the exploitation of migrant workers. Cases are generally attended within 1-2 months.

Para 36

Many of the issues/problems that migrant workers face/come across in receiving countries are as a result of the actions or inaction of the sponsors or employers and not as a result of issues in connection with recruitment practices prevailing in the country. The migrant workers are always encouraged by the SLBFE to follow the guidelines introduced by the SLBFE to ensure transparent recruitment practices in Sri Lanka.

Para 43

SLBFE welcomes complaints against it and ideas and recommendations. The SLBFE does not refuse to accept complaints and instead, welcomes them as such complaints will enable the SLBFE to identify problems, deliberate on them and take steps to address them. Usually, the migrant workers who are not covered by insurance schemes are provided relief/compensation through the Workers Welfare Fund (WWF).

Para 62

Sri Lanka has complied with Article 1 of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and does not discriminate against women by any form of distinction, exclusion or restriction either by law or administrative practice. Article 12 (1) of the Constitution has clearly laid down the principle that all persons are equal before the law and are entitled to the equal protection of the law. Further Article 12 (4) of the Constitution states that nothing in Article 12 would prevent special provisions being made by law for the advancement of women, children and disabled persons. Article 12(2) of the Constitution prohibits discrimination based on sex.

For over 60 years, women in Sri Lanka have benefited from the universal health care system and the universal free education system from primary to the point of completion of the first degree at University (tertiary levels). These policies which continue to be in force have contributed significantly to women's empowerment, near equal participation in the labour force as well as increased engagement in decision-making processes. Attitudinal

changes that favour the position of women in society have been possible largely due to high levels of educational attainment and women being thereby recognized as equal partners and valuable contributors to the development process. Women continue to enjoy rights equal with men, both in political and public life. However, the number of women participating in active leadership roles in party politics remains low when compared to the percentage of women in the workforce. Women's participation in standing for election has been low although participation in political activity is high. This issue is receiving attention of the relevant political parties at present. Despite the low number of women political representatives, women's participation in the formulation of government policy, holding public office and performing public functions at all levels of the Government has increased. Today, women in the Sri Lanka Administrative Service number 1070 out of a total cadre of 2269 (which is 47.15 %), an increase from 17.1% in 1993. In the Sri Lanka Planning Service, the percentage of women is 47.63%, an increase from 28.8% in 1993. In the Sri Lanka Foreign Service, the percentage of women is 47.5%, an increase from 29.7% in 1993. It is to be noted that when it comes to professional services, participation of women is increasing, but is purely based on merit and not on quotas on the basis of gender.

Both male & female migrant workers maintain a close relationship with the SLBFE especially because of the pre-departure arrangements made by the SLBFE.

Para 71

Prior to the visit of the Special Rapporteur to the Mirihana Detention Centre for migrants, he met with the Controller-General of the Department of Immigration & Emigration (CG-I & E) who explained in detail, the administrative process in place with regard to persons who have violated Sri Lankan Immigration & Emigration laws. In this context, the (authorities) wishes to provide the following details with regard to procedures on this matter.

(a) Any person who has violated the Immigration and Emigration Laws of Sri Lanka may be detained until such time as arrangements are made for his/her departure. Any person who has violated the Immigrants and Emigrants Act, may be ordered to be removed from the country as soon as possible as per Sec. 28 (1) (a), (b), (c) of the amended Immigrants and Emigrants Act. No. 20 of 1948. For removing a person from Sri Lanka Sec. 28, Sec. 45 and Sec. 48 should be read together.

(b) All such cases of detention are individually assessed to establish nationality, reasons for violating immigration regulations etc, in order to liaise with foreign missions, IOM, families of the detainees to facilitate early departure. Foreigners who are found violating Immigration regulations are immediately removed from the country if there is a valid passport and a return air ticket in their possession. In the event the persons concerned do not have the required documentation/tickets/finances, authorities are compelled to house them in the Mirihana Immigration Detention Centre, until suitable arrangements for deportation are made. During this period, authorities make every possible effort to obtain valid travel documents for these persons by liaising with the respective embassies expeditiously.

(c) Those in detention at the Mirihana Immigration Detention Centre are free to move in and out of the facility. They have access to mobile phones and internet and are provided free medical care.

(d) With regard to the Special Rapporteur's meeting with four children who have stayed in the Mirihana Immigration Detention Centre with their families for a long duration: these 4 children were released by the Department of Immigration and

Emigration in the end of September 2014, as it is not the Department's intention to restrict the personal liberty of any person without fair reason. The family which theses children belonged to are considered as stateless persons and irregular immigrants. It is these circumstances pertaining to the family that compelled the concerned authorities to house them in the Mirihana Immigration Detention Centre. They did not have any valid documents or traces to prove their origin or nationality. Therefore, the authorities referred them to UNHCR to take determine the status of the family consisting of four children while they were being housed in the Mirihana Immigration Detention Centre. The authorities released them from immigration custody based on humanitarian grounds and mutual understanding, with the assurance of UNHCR that they will be moved to a third country for resettlement as early as possible.

(e) With regard to the 11 migrant detainees at Boossa Detention Centre: they were kept there as a temporary measure and have since been released.

(f) The authorities wishes to emphasize that detention of irregular migrants is a step taken only as a measure of last resort and always for a very short time period in order to make necessary arrangements for their departure. It is not the intention of the authorities to detain families and children at any point, but under certain exceptional circumstances, authorities are compelled to keep them in approved places to ensure their security and safety until their repatriation. All possible alternatives have been explored prior to such steps being taken.

Para 106

Repeal of circular requiring the Family Background Report to be furnished by female domestic workers, based on which mothers with children below 5 years will be prevented from leaving for employment until the younger child reaches the age of 5 years: This is considered Government Policy taken by the Cabinet of Ministers to ensure the safeguarding of the rights of children.